

#269-15R (OAL Decision: Not yet available online)

CITY ASSOCIATION OF SUPERVISORS :
AND ADMINISTRATORS, :

PETITIONER, :

V. :

COMMISSIONER OF EDUCATION

STATE-OPERATED SCHOOL DISTRICT :
OF THE CITY OF NEWARK, :
ESSEX COUNTY, :

DECISION

RESPONDENT. :

SYNOPSIS

Petitioner, the City Association of Supervisors and Administrators (Association), asserted that the respondent District violated the tenure rights of seven Association members by transferring them to positions at the District’s central office. The Association sought the reinstatement of its members to positions as building principals, together with reimbursement for lost benefits and emoluments of employment. The respondent contended that the positions to which these principals were transferred are within the scope of their certifications and that, accordingly, their tenure rights were not violated. In an Initial Decision dated August 27, 2014, the ALJ agreed with the Association that its members’ rights under *N.J.S.A. 18A:28-5* had been violated, and ordered the District to restore them to positions as building principals in accordance with their tenure entitlements. In a decision dated January 12, 2015, the Commissioner remanded the matter to the Office of Administrative Law (OAL) for a more fully developed record relative to the District’s arguments that its actions should be upheld pursuant to its authority under *N.J.S.A. 18A:7F-6(b)(2)* and *N.J.A.C. 6A:33-1.1(b)2*.

On remand, the ALJ found, *inter alia*, that: since the issuance of the OAL’s August 2014 Initial Decision, only two of the administrators on whose behalf the Association had filed its claims – Zakiyya Razzaq and Gerald Samuels – remain employed by the District; for the five administrators no longer working in the district, this matter is moot; this case was returned to the ALJ for further consideration regarding the District’s obligations to “turn around” failing schools under No Child Left Behind (NCLB), and whether those obligations include a concomitant right to remove the principal of a failing building, without concern for the principal’s tenure rights; at no time did the District contend that Gerald Samuels was transferred to the central office as part of a larger plan to rehabilitate failing schools, but rather his transfer was an executive decision made to replace Samuels as the leader of his school building; regarding Zakiyya Razzaq, *N.J.S.A. 18A:7F-6(b)* grants the Commissioner the authority to direct staff reassignments in failing schools, but contains no language that would permit such reassignments to violate employee tenure rights; and the law remains clear that “all teaching staff members and other employees of a district under full State intervention shall retain and continue to acquire all rights and privileges acquired pursuant to Title 18A of the New Jersey Statutes,” *N.J.S.A. 18A:7A-40(b)*. The ALJ concluded that the actions of the District in assigning Samuels and Razzaq to central office positions violated their rights under *N.J.S.A. 18A:28-5*. Accordingly, the ALJ ordered the District to restore Samuels and Razzaq to positions as building principals in accordance with their tenure entitlements.

The Commissioner adopted the Initial Decision of the OAL as the final decision in this matter. In so doing, the Commissioner noted that only Gerald Samuels continues to be employed by the District, which was accordingly directed to restore Samuels to a building principal position in accordance with his tenure entitlement.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

August 13, 2015

OAL DKT. NO. EDU 788-15
(EDU 849-13 ON REMAND)
AGENCY DKT. NO. 318-11/12

CITY ASSOCIATION OF SUPERVISORS :
AND ADMINISTRATORS, :
 :
 PETITIONER, :
 : COMMISSIONER OF EDUCATION
V. :
 : DECISION
STATE-OPERATED SCHOOL DISTRICT :
OF THE CITY OF NEWARK, :
 :
 RESPONDENT. :

The record, the Initial Decision issued August 27, 2014 by the Office of Administrative Law (OAL), and the subsequent Initial Decision issued July 13, 2015 (in response to the Commissioner’s January 12, 2015 remand) have been reviewed. The District’s exceptions – submitted in accordance with *N.J.A.C.* 1:1-18.4 – and petitioner’s reply thereto were also considered by the Commissioner.

Having now fully considered all outstanding issues, the Commissioner adopts the ALJ’s findings and conclusions expressed within both Initial Decisions – for the reasons collectively stated therein – as the final determination in this matter.

All but one of the aggrieved principals represented by petitioner in this matter have resigned or retired from the District.¹ Accordingly, the District is directed to restore the only remaining employee – Gerald Samuels – to a building principal position in accordance with

¹ Respondent’s July 27, 2015 exceptions indicate that Zakiyya Razzaq, one of two remaining employees identified in the July 13, 2015 Initial Decision, retired effective June 30, 2015.

his tenure entitlement,² and the claims on behalf of James Carlo, JoAnn Gilmore, Donna Marable³, Lavonne Pack, Zakiyya Razzaq, and Roy Wilson are dismissed as moot.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Issued: August 13, 2015

Mailed: August 17, 2015

² The Commissioner agrees with the ALJ's determination that Samuels is not entitled to back pay or other compensation, including reimbursement for parking expenses.

³ The Commissioner is also in accord with the ALJ's determination – for the reasons outlined in the August 27, 2014 Initial Decision – that Ms. Marable's claims were not untimely under the 90-day rule.

⁴ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*. (*N.J.S.A. 18A:6-9.1*)